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6 Attorneys for Plaintiff  
JOHN TENNISON

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

11 JOHN TENNISON,

12 Plaintiff,

13 v.

14 CITY AND COUNTY OF  
SAN FRANCISCO; SAN FRANCISCO  
15 POLICE DEPARTMENT; PRENTICE EARL  
SANDERS; NAPOLEON HENDRIX; and  
16 GEORGE BUTTERWORTH,

17 Defendants.

Case No. C 04-00574 CW (EMC)

**EXHIBIT 30 TO DECLARATION OF  
DANIEL E. PURCELL IN SUPPORT OF  
JOHN TENNISON'S OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT  
AND CROSS-MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON  
MUNICIPAL LIABILITY**

Date: October 28, 2005

Time: 10:00 a.m.

Courtroom: 2

Judge: The Hon. Claudia Wilken

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16 GEORGE BUTTERWORTH,

17 Defendants.

Case No. C 04-00574 CW

**PLAINTIFF JOHN TENNISON'S  
RESPONSES TO DEFENDANT CITY  
AND COUNTY OF SAN FRANCISCO'S  
FIRST SET OF INTERROGATORIES**

20  
21 **PROPOUNDING PARTY: DEFENDANT CITY AND COUNTY OF  
SAN FRANCISCO**

22 **RESPONDING PARTY: PLAINTIFF JOHN TENNISON**

23 **SET NUMBER: ONE**

1 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff John  
2 Tennison hereby responds to Defendant City and County of San Francisco's First Set of  
3 Interrogatories as follows:

4 **GENERAL RESPONSES AND OBJECTIONS**

5 1. Tennison objects to the Interrogatories to the extent that they seek information  
6 beyond the scope of Rules 26 and 33 of the Federal Rules of Civil Procedure and/or seek to  
7 impose upon Tennison a duty different from or in excess of that provided by the Federal Rules of  
8 Civil Procedure or applicable Local Rules.

9 2. Tennison objects to the Interrogatories on the ground that they are, individually  
10 and collectively, overly broad, unduly burdensome or oppressive, and/or unreasonably  
11 cumulative and duplicative.

12 3. Tennison objects to the Interrogatories to the extent that they seek information  
13 that is neither relevant to this litigation nor reasonably calculated to lead to the discovery of  
14 admissible evidence.

15 4. Tennison objects to the Interrogatories to the extent that they call for information  
16 protected from disclosure by the attorney-client privilege or any other applicable privileges or  
17 protections. Any inadvertent disclosure of such information shall not be deemed a waiver of any  
18 such protection or privilege.

19 5. Tennison objects to the Interrogatories to the extent that they call for information  
20 that constitutes attorney work product, was prepared in anticipation of or in connection with  
21 litigation, discloses the mental impressions, conclusions, opinions or legal theories of any  
22 attorneys for Tennison or for persons having a common interest with Tennison, or is otherwise  
23 protected from disclosure under applicable privileges, laws or rules. Any inadvertent disclosure  
24 of such information shall not be deemed a waiver of any such protection or privilege.

25 6. Tennison objects to the Interrogatories to the extent they seek information equally  
26 available to the City and County of San Francisco.

27 7. Tennison objects to the Interrogatories to the extent they seek information that is  
28 readily obtainable from other sources which are less burdensome and/or less expensive.

8. Tennison objects to the Interrogatories to the extent they seek information not in the possession, custody, or control of Tennison.

9. Tennison objects to the Interrogatories to the extent they call for Tennison to form a legal conclusion before offering any responses.

10. Tennison submits Responses without conceding the relevancy, materiality, or admissibility of the subject matter or any information provided.

11. The fact that Tennison has responded in whole or in part to any particular Interrogatory shall not be interpreted as implying that Tennison acknowledges the propriety of any such Interrogatory. Further, Tennison's Response to any Interrogatory shall not be construed as an admission of the relevance or admissibility of any such information provided, or as a waiver or abridgement of any applicable privilege or of any applicable objection set forth below. Tennison reserves the right to supplement, amend, or correct all or part of any Responses provided herein, and to object to the admissibility in evidence of any part of the Responses to the Interrogatories or any information contained therein.

12. Tennison's investigation and discovery of all the facts and circumstances relating to this action have not been completed and are ongoing. It is therefore possible that additional information may hereafter be discovered that is responsive to the City and County of San Francisco's Interrogatories. Tennison's Responses are based on information currently available to him. Tennison reserves the right to complete his investigation and discovery of the facts and his preparation for trial, and to adduce evidence at trial that would have been included in these Responses had its existence been known to Tennison at this time.

13. Tennison objects to the Interrogatories seek information Tennison or another party has already provided in Discovery.

## RESPONSES AND OBJECTIONS

### INTERROGATORY NO. 1

Please state all facts supporting your allegation in paragraph 44 of your complaint that "SFPD delegated final policymaking authority to Hendrix and Sanders with respect to the investigation and arrest of gang-related suspects."

**RESPONSE TO INTERROGATORY NO. 1**

Tennison objects to this Interrogatory on the ground that it calls for information protected from disclosure by the attorney-client privilege or any other applicable privileges or protections. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls for information that constitutes attorney work product, was prepared in anticipation of or in connection with litigation, discloses the mental impressions, conclusions, opinions or legal theories of any attorneys for Tennison or for persons having a common interest with Tennison, or is otherwise protected from disclosure under applicable privileges, laws or rules. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison to form a legal conclusion before offering any responses. Tennison further objects to this Interrogatory to the extent that it seeks information equally available to the City.

Tennison also objects to this Interrogatory as premature because the City has not completed production of materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of Documents and Things, and/or other discovery requests pertinent to this inquiry, such as Tennison's February 1, 2005 Notice of Deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four months to deprive from Tennison further evidence of its liability in this case. The City's demand for discovery under these circumstances is troubling.

Subject to and without waiving these objections, Tennison responds that at this time he understands and believes the following: In the 1980's, the San Francisco Police Department assigned Napoleon Hendrix and Earl Sanders to focus on alleged gang-related murders. In that capacity, Hendrix and Sanders worked with the Gang Task Force, a group of police officers charged with stopping gang activity generally, and that Hendrix and Sanders were given authority over the Gang Task Force with respect to any alleged gang-related homicide, and frequently used GTF officers to collect information and evidence as part of their homicide investigations. Solving possibly gang-related murders was such a high priority for the SFPD,

1 and Hendrix and Sanders personally, that the two inspectors met with the Gang Task Force every  
 2 day at noon for years during the late 1980s and 1990s to discuss alleged gang-related killings.  
 3 No authority within the SFPD supervised Hendrix's and Sanders' decision making with regard to  
 4 the investigation and arrest of alleged gang-related suspects. Instead, that authority was  
 5 delegated to Hendrix and Sanders.

## 6 INTERROGATORY NO. 2

7 Please identify (i.e., provide name and all known addresses and phone numbers) all  
 8 persons with knowledge of the facts stated in your response to interrogatory 1.

## 9 RESPONSE TO INTERROGATORY NO. 2

10 Tennison objects to this Interrogatory to the extent that it seeks information equally  
 11 available to City. Discovery regarding municipal liability is ongoing and Tennison reserves the  
 12 right to complete his investigation and discovery of the facts and his preparation for trial, to  
 13 supplement this Response, and to adduce evidence at trial that would have been included in this  
 14 Response had its existence been known to Tennison at this time. Tennison also objects to this  
 15 Interrogatory as premature because the City has not completed production of materials  
 16 responsive to Tennison's February 1, 2005 Second Set of Requests for Production of Documents  
 17 and Things, and/or other discovery requests pertinent to this inquiry, such as Tennison's  
 18 February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has  
 19 intentionally delayed providing discovery for these past four months to deprive from Tennison  
 20 further evidence of its liability in this case. The City's demand for discovery under these  
 21 circumstances is troubling.

22 Subject to and without waiving the specific and general objections above, Tennison  
 23 understands that people with knowledge of these facts include:

24 Napoleon Hendrix

25 Prentice Earl Sanders

26 Gerald McCarthy

27 Michael Lewis

28 Neville Gittens

1 Leroy Lindo

2 Frank Jordan

3 **INTERROGATORY NO. 3**

4 Please identify all documents supporting or otherwise relating to your response to  
5 interrogatory 1.

6 **RESPONSE TO INTERROGATORY NO. 3**

7 Tennison objects to this Interrogatory on the ground that it calls for information protected  
8 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
9 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
10 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
11 for information that constitutes attorney work product, was prepared in anticipation of or in  
12 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
13 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
14 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
15 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
16 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
17 to form a legal conclusion before offering any responses. Tennison further objects to this  
18 Interrogatory to the extent that it seeks information equally available to the City. Tennison also  
19 objects to this Interrogatory as premature because the City has not completed production of  
20 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
21 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
22 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
23 City has intentionally delayed providing discovery for these past four months to deprive from  
24 Tennison further evidence of its liability in this case. The City's demand for discovery under  
25 these circumstances is troubling.

26 **INTERROGATORY NO. 4**

27 Please state all facts supporting your allegation in paragraph 44 of your complaint that  
28 "SFPD did not supervise their activities, and Hendrix and Sanders were not constrained by



1 policies not of their making.”

2 **RESPONSE TO INTERROGATORY NO. 4**

3       Tennison objects to this Interrogatory on the ground that it calls for information protected  
4 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
5 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
6 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
7 for information that constitutes attorney work product, was prepared in anticipation of or in  
8 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
9 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
10 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
11 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
12 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
13 to form a legal conclusion before offering any responses. Tennison further objects to this  
14 Interrogatory to the extent that it seeks information equally available to City.

15       Tennison also objects to this Interrogatory as premature because the City has not  
16 completed production of materials responsive to Tennison’s February 1, 2005 Second Set of  
17 Requests for Production of Documents and Things, and/or other discovery requests pertinent to  
18 this inquiry, such as Tennison’s February 1, 2005 notice of deposition under Fed. R. Civ.  
19 P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four  
20 months to deprive from Tennison further evidence of its liability in this case. The City’s demand  
21 for discovery under these circumstances is troubling.

22       Discovery regarding municipal liability is ongoing and Tennison reserves the right to  
23 complete his investigation and discovery of the facts and his preparation for trial, to supplement  
24 this Response, and to adduce evidence at trial that would have been included in this Response  
25 had its existence been known to Tennison at this time.

26       Subject to and without waiving the specific and general objections above, Tennison sets  
27 forth his information and belief as follows:

28       Defendants Hendrix’s and Sanders’ acts and/or omissions led to the violations of



1 Tennison's constitutional rights and his 13 ½ years of wrongful imprisonment. Had the City  
2 provided Defendants Hendrix and Sanders with adequate supervision, they would not have,  
3 absent willful disregard of this training, participated in the course of conduct detailed in the  
4 Complaint, in Judge Wilken's Order granting Tennison's petition for writ of habeas corpus, and  
5 as outlined below.

6 First, on November 7, 1990, after the jury verdict in Tennison's case but prior to the  
7 hearing on his new-trial motion and his sentencing, Lovinsky Ricard confessed, on audiotape, to  
8 the murder of Roderick Shannon in an interview with San Francisco Police Officers Michael  
9 Lewis and Neville Gittens. In their depositions in Tennison's habeas proceeding, defendants  
10 Hendrix and Sanders both admitted to learning of the confession shortly after it was made.  
11 Similarly, in his deposition in Tennison's habeas proceeding, Lewis confirmed that he informed  
12 Hendrix and Sanders of the Ricard confession shortly after it was made. In his deposition in this  
13 case, Hendrix further confirmed that he learned of the confession between the jury verdict in  
14 Tennison's case and the hearing on Tennison's new-trial motion, and that he took no steps to  
15 ensure that the confession was turned over to the District Attorney or to Tennison's counsel. In  
16 fact, he testified that he did not listen to the tape of the confession after he learned of it and was  
17 irritated at Officers Lewis and Gittens for having interviewed Ricard. Defendant George  
18 Butterworth denies that Hendrix or Sanders ever told him about the Ricard confession, and has  
19 testified that he did not know of the confession until Lewis informed him of it at lunch on  
20 May 17, 1991, during the hearing on Tennison's new-trial motion. He further testified that, had  
21 he known of the confession before that time, he immediately would have disclosed the  
22 confession to Tennison's attorney. Neither Tennison nor either of his attorneys, Jeffrey Adachi  
23 and LeRue Grim, knew of the Ricard confession until Butterworth disclosed its existence on  
24 May 17, 1991. The taped confession, and any notes accompanying it, should have been  
25 produced to Adachi on November 7, 1990.

26 Second, on October 4, 1989, Hendrix and Sanders formally requested \$2,500 from the so-  
27 called "Secret Witness Program," purportedly to pay a witness in connection with the SFPD  
28 investigation of the homicide of Roderick Shannon. At the time of the request, Masina Fauolo,

1 one of the two purported eyewitnesses who testified against Tennison at trial, had been talking to  
2 the inspectors for six weeks, but had not yet made any formal, recorded statement. Hendrix's  
3 and Sanders' request was subsequently approved. On October 11, 1989, Sanders withdrew  
4 \$1,250 from a police contingency fund. On October 31, 1989, Fauolo made her first formal,  
5 recorded statement to the police regarding the case. That statement was inconsistent in  
6 numerous material ways with the known physical evidence and the testimony of neighborhood  
7 residents who witnessed the car chase preceding the Shannon murder. On November 28, 1989,  
8 Pauline Maluina, the other purported eyewitness against Tennison, made a formal, recorded  
9 statement to police that was inconsistent in numerous material ways with the known physical  
10 evidence, the testimony of neighborhood residents, and Fauolo's earlier statement. In each of  
11 those interviews, Hendrix supplied Maluina and Fauolo with critical information the girls later  
12 claimed to have already known. Four days later, on December 2, 1989, Hendrix withdrew  
13 \$1,120 from a police contingency fund. Hendrix testified at his deposition that the Secret  
14 Witness Program, by its nature, was kept secret from the District Attorney and that information  
15 about requests and payments of money from the Secret Witness Program were not disclosed to  
16 the District Attorney's office. Defendant Butterworth confirmed at his deposition that he was  
17 never aware of the request for funds, or any payment of funds to Fauolo, Maluina, Hendrix, or  
18 Sanders, and that, if he had been, he immediately would have disclosed that information to  
19 Tennison's attorney. Neither Tennison nor either of his attorneys, Jeffrey Adachi and LeRue  
20 Grim, knew of the Secret Witness Program request or any payment of funds to any witness until  
21 fall 2001. Neither Tennison nor his counsel knew of Hendrix's and Sanders' receipt of  
22 disbursements from Contingent Fund B until September 2003. All of the materials reflecting  
23 Hendrix's and Sanders' application for and receipt of approval of payments from the Secret  
24 Witness Fund, disbursements from that fund, and disbursements from Contingent Fund B should  
25 have been disclosed to Tennison's counsel prior to January 1, 1990.

26 Third, on January 3, 1990, Hendrix and Sanders interviewed Chante Smith, who claimed  
27 to know that Tennison had not been present at the murder scene. In addition to exonerating  
28 Tennison and Antoine Goff, Smith also implicated a number of other individuals in the killing,

1 including Lovinsky Ricard. Sanders took notes of the interview which did not convey either  
2 Smith's exculpatory statements regarding Tennison or her inculpatory statements regarding  
3 Ricard and others. Hendrix and Sanders turned these sketchy notes over to Butterworth, but, as  
4 Butterworth testified at his deposition, the notes did not convey the exculpatory information  
5 Smith had conveyed, and were too cryptic to be meaningful. Neither Hendrix nor Sanders made  
6 any effort to memorialize the exculpatory statements Smith had made to them, to inform  
7 Butterworth, Tennison, or Tennison's counsel about those statements, or to follow up with Smith  
8 regarding her knowledge of the Shannon murder, which directly conflicted with the case Hendrix  
9 and Sanders presented to Butterworth. Butterworth testified that he did not have knowledge,  
10 from the notes or any other source, of Smith's exculpatory statements, and did not disclose those  
11 statements to Tennison or his counsel. Butterworth did not turn over the January 3 notes to  
12 Tennison's counsel. Indeed, Sanders participated in the State's opposition to Tennison's motion  
13 for a new trial and submitted a declaration stating that Ricard's confession was unreliable  
14 because it was uncorroborated. Sanders made this false statement with the knowledge that,  
15 months before, Smith had corroborated all the material facts in Ricard's story in an interview he  
16 himself had conducted. Neither Tennison nor his counsel knew of Smith's prior statement to the  
17 police until 1992. Tennison did not know about or receive the written notes of the Smith  
18 interview until the fall of 2001. At some point after his conviction, Tennison learned that a  
19 woman named "Chante" claimed to have witnessed the Shannon murder, but he did not know the  
20 woman was Chante Smith and had previously given a statement to police. He informed his  
21 counsel of all the information he had about "Chante," but counsel was not able to locate her until  
22 after Tennison was sentenced and sent to jail.

23 Fourth, on February 9, 1990, Sanders and San Francisco Police Inspector Nevil Gittens  
24 interviewed Luther Blue. During that interview, the police told Blue that they knew he was  
25 present at the murder and that the car chase preceding the murder had started at the 7-Eleven on  
26 Bayshore Boulevard, not at Lovers' Lane, as Fauolo and Maluina would testify at trial. Hendrix  
27 testified at deposition that, when interviewing a witness to a crime, he would not question the  
28 witness by making statements he knew to be false. Although the Blue interview was videotaped,

1 the tapes and notes about taped interviews produced to Tennison and his counsel in pretrial  
2 discovery do not include the February 9 Blue interview. Just five days later, on February 14,  
3 1990, the police again interviewed Blue. The interview was conducted by Sanders and Hendrix.  
4 This time they said nothing about Blue's presence at the murder or the beginning of the car  
5 chase; they asked Blue whether he was involved and, when he denied being involved, they ended  
6 the interview. The State then produced to Tennison only the tape of this second interview, rather  
7 than the tape and notes from the far more informative first interview. The State likewise omitted  
8 any mention of the first Blue interview from the discovery log it produced to Tennison. As a  
9 result, the log was materially misleading and created for the purpose of suppressing key evidence  
10 from Tennison. The log ultimately produced to Tennison – as described in the deposition of  
11 Adachi – likewise omitted other important events, including a January 3, 1990 interview of a  
12 “witness” who, Tennison discovered from discovery finally turned over in the habeas litigation  
13 in 2001, was Chante Smith. Neither Tennison nor his attorneys knew of the February 9 Blue  
14 interview or the notes from it until fall 2001.

15 Fifth, on April 24, 1990, Hendrix and Butterworth participated in the administration of a  
16 polygraph test to Pauline Maluina. At the time, Maluina had recanted her previous testimony  
17 that she had been present when Shannon was killed. She had previously been questioned on  
18 April 22 and 23, and on both days had stated that she was not a witness to a murder. On  
19 April 24, her third consecutive day of police questioning, she repeated during the polygraph that  
20 she was not a witness to the Shannon murder and previously had testified falsely under oath.  
21 Hendrix, Butterworth, and Sanders were aware of the fact and results of the polygraph  
22 examination, but did not inform Tennison or his counsel of the examination. Tennison was  
23 unaware of the role of the polygraph in Butterworth's, Hendrix's, and Sanders' three-day  
24 campaign to bully Maluina to retract her recantation of her previous testimony. Tennison and his  
25 counsel did not know about, or receive information or materials from, the polygraph or police  
26 memorandum describing the polygraph until fall 2001, and did not know about the continued  
27 existence of or have access to the polygraph administration materials until March 2005.

28 Sixth, during the three-day bullying campaign, when Masina Fauolo's veracity was being

1 challenged by Maluina and should have been in very serious doubt in the eyes of any reasonable  
2 police officer, Hendrix and Sanders interviewed Fauolo and recorded that interview on  
3 audiotape. Defendants never produced the tapes of that interview to Tennison, in fulfillment of  
4 their Brady v. Maryland obligations, in the underlying criminal case or in response to Tennison's  
5 valid subpoena in his habeas suit. The tapes initially were not produced in response to  
6 Tennison's discovery requests in this suit. The Defendants did not produced the tapes until  
7 May 2005, and then only after Magistrate Judge Chen ordered the tapes produced following a  
8 lengthy legal battle. Tennison first learned of the existence of the tapes in discovery in this case.  
9 Defendants maintain that the tapes are blank or inaudible refused to allow Tennison to take  
10 possession of them in order to perform non-destructive testing until the Court ordered them to.  
11 The only reasonable inference is that the tapes contain (or used to contain) information favorable  
12 to Tennison's case and have continually been suppressed by defendants in order to conceal that  
13 information from Tennison. If the tapes are indeed blank, the only reasonable inference is that  
14 defendants destroyed the content of the tapes in a deliberate, bad-faith effort to conceal evidence  
15 favorable to Tennison.

16       Seventh, Hendrix and Sanders engaged in a pattern of manufacturing testimony through  
17 their interviews with Fauolo and Maluina. During Masina Fauolo's first two telephone calls with  
18 Hendrix in August 1989, Fauolo knew next to nothing about the homicide. During Hendrix's  
19 first recorded interview with Fauolo (who by that time had been talking to Hendrix and Sanders  
20 for six weeks), Fauolo knew more, but still knew nothing about the facts of the homicide.  
21 Hendrix and Sanders supplied her with critical details, creating an inaccurate tale about the car  
22 chase preceding the murder and the murder itself, which Fauolo would go on to parrot at trial.  
23 Fauolo's testimony was materially inconsistent with the known physical evidence and the  
24 statements of neighborhood residents who witnessed the car chase. For these reasons and others,  
25 any reasonable police officer would have known that Fauolo was not a witness to any murder.  
26 But despite the obvious signs that Fauolo was lying, Hendrix and Sanders assisted her in  
27 concocting presentable (yet false) trial testimony. Similarly, during Hendrix's first recorded  
28 interview with Maluina, she knew virtually nothing about the facts of the case. The details she

1 did profess to know could not be reconciled with Fauolo's false statements, let alone the physical  
2 evidence or statements of neighborhood residents. During that interview, Hendrix supplied  
3 Maluina with numerous key facts, including without limitation the location of the car crash, the  
4 location of the murder, and the type of gun used to shoot Shannon. Again, any reasonable police  
5 officer would have known that Maluina was not a witness to the Shannon murder.

6 Indeed, after giving perjured testimony at Tennison's 707 hearing, Maluina recanted that  
7 testimony and attempted to come clean, telling Hendrix and Butterworth that she had not  
8 witnessed the Shannon murder. Despite all these clear indications that the narrations Hendrix  
9 and Sanders helped the girls to concoct were patently untrue, Hendrix and Sanders assisted  
10 Butterworth in bullying Maluina into withdrawing her recantation – including using Fauolo, the  
11 person whom Maluina claimed coerced her false testimony in the first place – to pressure  
12 Maluina to withdraw her claim that she lied and was bullied by Fauolo into lying, and then  
13 manufacturing Maluina's perjured testimony, which subsequently was offered at trial and played  
14 a key role in Tennison's unjust conviction.

15 Hendrix and Sanders also checked out and verified Mr. Tennison's alibi in  
16 November 1989, but proceeded to manufacture the case against him anyway.

17 In the 1980's, the San Francisco Police Department assigned Napoleon Hendrix and Earl  
18 Sanders to focus on alleged gang-related murders. In that capacity, Hendrix and Sanders worked  
19 with the Gang Task Force, a group of police officers charged with stopping gang activity  
20 generally, and that Hendrix and Sanders were given authority over the Gang Task Force with  
21 respect to any alleged gang-related homicide, and frequently used GTF officers to collect  
22 information and evidence as part of their homicide investigations. Solving possibly gang-related  
23 murders was such a high priority for the SFPD, and Hendrix and Sanders personally, that the two  
24 inspectors met with the Gang Task Force every day at noon for years during the late 1980s and  
25 1990s to discuss alleged gang-related killings. No authority within the SFPD supervised  
26 Hendrix's and Sanders' decision making with regard to the investigation and arrest of alleged  
27 gang-related suspects. Instead, that authority was delegated to Hendrix and Sanders.

28 Nevertheless when Tennison inquired further about Hendrix's and Sanders' training and



1 procedures at those individuals' depositions, defense counsel restricted inquiring into these  
 2 matters. The City has yet to present witnesses who will testify as to any policies or procedures  
 3 which governed Hendrix's and Sanders' (mis)conduct.

4 **INTERROGATORY NO. 5**

5 Please identify (i.e., provide name and all known addresses and phone numbers) all  
 6 persons with knowledge of the facts stated in your response to interrogatory 4.

7 **RESPONSE TO INTERROGATORY NO. 5**

8 Tennison objects to this Interrogatory on the ground that it calls for Tennison to form a  
 9 legal conclusion before offering any responses. Tennison further objects to this Interrogatory to  
 10 the extent that it seeks information equally available to City. Tennison also objects to this  
 11 Interrogatory as premature because the City has not completed production of materials  
 12 responsive to Tennison's February 1, 2005 Second Set of Requests for Production of Documents  
 13 and Things, and/or other discovery requests pertinent to this inquiry, such as Tennison's  
 14 February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has  
 15 intentionally delayed providing discovery for these past four months to deprive from Tennison  
 16 further evidence of its liability in this case. The City's demand for discovery under these  
 17 circumstances is troubling.

18 Discovery regarding municipal liability is ongoing and Tennison reserves the right to  
 19 complete his investigation and discovery of the facts and his preparation for trial, to supplement  
 20 this Response, and to adduce evidence at trial that would have been included in this Response  
 21 had its existence been known to Tennison at this time.

22 Subject to and without waiving the specific and general objections above, Tennison sets  
 23 forth his information and belief that persons with knowledge of these facts include:

24 Napoleon Hendrix

25 Prentice Earl Sanders

26 Gerald McCarthy

27 Neville Gittens

28 Michael Lewis



1 Leroy Lindo

2 Chante Smith

3 Luther Blue

4 George Butterworth

5 Lovinsky Ricard

6 Pauline Maluina

7 Frank Jordan

8 Masina Fauolo

9 **INTERROGATORY NO. 6**

10 Please identify all documents supporting or otherwise relating to your response to  
11 interrogatory 4.

12 **RESPONSE TO INTERROGATORY NO. 6**

13 Tennison objects to this Interrogatory on the ground that it calls for information protected  
14 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
15 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
16 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
17 for information that constitutes attorney work product, was prepared in anticipation of or in  
18 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
19 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
20 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
21 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
22 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
23 to form a legal conclusion before offering any responses. Tennison further objects to this  
24 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
25 objects to this Interrogatory as premature because the City has not completed production of  
26 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
27 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
28 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the

1 City has intentionally delayed providing discovery for these past four months to deprive from  
 2 Tennison further evidence of its liability in this case. The City's demand for discovery under  
 3 these circumstances in troubling.

4 **INTERROGATORY NO. 7**

5 Please state all facts supporting your allegation in paragraph 45 of your complaint that  
 6 "SFPD failed adequately to provide its officers, Inspectors Sanders and Hendrix , with sufficient  
 7 training regarding the preservation and production of exculpatory evidence . . . ."

8 **RESPONSE TO INTERROGATORY NO. 7**

9 Tennison objects to this Interrogatory on the ground that it calls for information protected  
 10 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
 11 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
 12 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
 13 for information that constitutes attorney work product, was prepared in anticipation of or in  
 14 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
 15 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
 16 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
 17 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
 18 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
 19 to form a legal conclusion before offering any responses. Tennison further objects to this  
 20 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
 21 objects to this Interrogatory as premature because the City has not completed production of  
 22 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
 23 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
 24 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
 25 City has intentionally delayed providing discovery for these past four months to deprive from  
 26 Tennison further evidence of its liability in this case. The City's demand for discovery under  
 27 these circumstances in troubling.

28 Discovery regarding municipal liability is ongoing and Tennison reserves the right to

1 complete his investigation and discovery of the facts and his preparation for trial, to supplement  
2 this Response, and to adduce evidence at trial that would have been included in this Response  
3 had its existence been known to Tennison at this time.

4 Subject to and without waiving the specific and general objections above, Tennison  
5 responds as follows:

6 Defendants Hendrix's and Sanders' acts and/or omissions led to the violations of  
7 Tennison's constitutional rights and his 13 ½ years of wrongful imprisonment. Had the City  
8 provided Defendants Hendrix and Sanders adequate training regarding the preservation and  
9 production of exculpatory evidence, they would not have, absent willful disregard of this  
10 training, participated in the course of conduct detailed in the Complaint, in Judge Wilken's Order  
11 granting Tennison's petition for writ of habeas corpus, and as outlined below.

12 First, on November 7, 1990, after the jury verdict in Tennison's case but prior to the  
13 hearing on his new-trial motion and his sentencing, Lovinsky Ricard confessed, on audiotape, to  
14 the murder of Roderick Shannon in an interview with San Francisco Police Officers Michael  
15 Lewis and Neville Gittens. In their depositions in Tennison's habeas proceeding, defendants  
16 Hendrix and Sanders both admitted to learning of the confession shortly after it was made.  
17 Similarly, in his deposition in Tennison's habeas proceeding, Lewis confirmed that he informed  
18 Hendrix and Sanders of the Ricard confession shortly after it was made. In his deposition in this  
19 case, Hendrix further confirmed that he learned of the confession between the jury verdict in  
20 Tennison's case and the hearing on Tennison's new-trial motion, and that he took no steps to  
21 ensure that the confession was turned over to the District Attorney or to Tennison's counsel. In  
22 fact, he testified that he did not listen to the tape of the confession after he learned of it and was  
23 irritated at Officers Lewis and Gittens for having interviewed Ricard. Defendant George  
24 Butterworth denies that Hendrix or Sanders ever told him about the Ricard confession, and has  
25 testified that he did not know of the confession until Lewis informed him of it at lunch on  
26 May 17, 1991, during the hearing on Tennison's new-trial motion. He further testified that, had  
27 he known of the confession before that time, he immediately would have disclosed the  
28 confession to Tennison's attorney. Neither Tennison nor either of his attorneys, Jeffrey Adachi

1 and LeRue Grim, knew of the Ricard confession until Butterworth disclosed its existence on  
2 May 17, 1991. The taped confession, and any notes accompanying it, should have been  
3 produced to Adachi on November 7, 1990.

4 Second, on October 4, 1989, Hendrix and Sanders formally requested \$2,500 from the so-  
5 called "Secret Witness Program," purportedly to pay a witness in connection with the SFPD  
6 investigation of the homicide of Roderick Shannon. At the time of the request, Masina Fauolo,  
7 one of the two purported eyewitnesses who testified against Tennison at trial, had been talking to  
8 the inspectors for six weeks, but had not yet made any formal, recorded statement. Hendrix's  
9 and Sanders' request was subsequently approved. On October 11, 1989, Sanders withdrew  
10 \$1,250 from a police contingency fund. On October 31, 1989, Fauolo made her first formal,  
11 recorded statement to the police regarding the case. That statement was inconsistent in  
12 numerous material ways with the known physical evidence and the testimony of neighborhood  
13 residents who witnessed the car chase preceding the Shannon murder. On November 28, 1989,  
14 Pauline Maluina, the other purported eyewitness against Tennison, made a formal, recorded  
15 statement to police that was inconsistent in numerous material ways with the known physical  
16 evidence, the testimony of neighborhood residents, and Fauolo's earlier statement. In each of  
17 those interviews, Hendrix supplied Maluina and Fauolo with critical information the girls later  
18 claimed to have already known. Four days later, on December 2, 1989, Hendrix withdrew  
19 \$1,120 from a police contingency fund. Hendrix testified at his deposition that the Secret  
20 Witness Program, by its nature, was kept secret from the District Attorney and that information  
21 about requests and payments of money from the Secret Witness Program were not disclosed to  
22 the District Attorney's office. Defendant Butterworth confirmed at his deposition that he was  
23 never aware of the request for funds, or any payment of funds to Fauolo, Maluina, Hendrix, or  
24 Sanders, and that, if he had been, he immediately would have disclosed that information to  
25 Tennison's attorney. Neither Tennison nor either of his attorneys, Jeffrey Adachi and LeRue  
26 Grim, knew of the Secret Witness Program request or any payment of funds to any witness until  
27 fall 2001. Neither Tennison nor his counsel knew of Hendrix's and Sanders' receipt of  
28 disbursements from Contingent Fund B until September 2003. All of the materials reflecting

1 Hendrix's and Sanders' application for and receipt of approval of payments from the Secret  
2 Witness Fund, disbursements from that fund, and disbursements from Contingent Fund B should  
3 have been disclosed to Tennison's counsel prior to January 1, 1990.

4 Third, on January 3, 1990, Hendrix and Sanders interviewed Chante Smith, who claimed  
5 to know that Tennison had not been present at the murder scene. In addition to exonerating  
6 Tennison and Antoine Goff, Smith also implicated a number of other individuals in the killing,  
7 including Lovinsky Ricard. Sanders took notes of the interview which did not convey either  
8 Smith's exculpatory statements regarding Tennison or her inculpatory statements regarding  
9 Ricard and others. Hendrix and Sanders turned these sketchy notes over to Butterworth, but, as  
10 Butterworth testified at his deposition, the notes did not convey the exculpatory information  
11 Smith had conveyed, and were too cryptic to be meaningful. Neither Hendrix nor Sanders made  
12 any effort to memorialize the exculpatory statements Smith had made to them, to inform  
13 Butterworth, Tennison, or Tennison's counsel about those statements, or to follow up with Smith  
14 regarding her knowledge of the Shannon murder, which directly conflicted with the case Hendrix  
15 and Sanders presented to Butterworth. Butterworth testified that he did not have knowledge,  
16 from the notes or any other source, of Smith's exculpatory statements, and did not disclose those  
17 statements to Tennison or his counsel. Butterworth did not turn over the January 3 notes to  
18 Tennison's counsel. Indeed, Sanders participated in the State's opposition to Tennison's motion  
19 for a new trial and submitted a declaration stating that Ricard's confession was unreliable  
20 because it was uncorroborated. Sanders made this false statement with the knowledge that,  
21 months before, Smith had corroborated all the material facts in Ricard's story in an interview he  
22 himself had conducted. Neither Tennison nor his counsel knew of Smith's prior statement to the  
23 police until 1992. Tennison did not know about or receive the written notes of the Smith  
24 interview until the fall of 2001. At some point after his conviction, Tennison learned that a  
25 woman named "Chante" claimed to have witnessed the Shannon murder, but he did not know the  
26 woman was Chante Smith and had previously given a statement to police. He informed his  
27 counsel of all the information he had about "Chante," but counsel was not able to locate her until  
28 after Tennison was sentenced and sent to jail.

1 Fourth, on February 9, 1990, Sanders and San Francisco Police Inspector Nevil Gittens  
2 interviewed Luther Blue. During that interview, the police told Blue that they knew he was  
3 present at the murder and that the car chase preceding the murder had started at the 7-Eleven on  
4 Bayshore Boulevard, not at Lovers' Lane, as Fauolo and Maluina would testify at trial. Hendrix  
5 testified at deposition that, when interviewing a witness to a crime, he would not question the  
6 witness by making statements he knew to be false. Although the Blue interview was videotaped,  
7 the tapes and notes about taped interviews produced to Tennison and his counsel in pretrial  
8 discovery do not include the February 9 Blue interview. Just five days later, on  
9 February 14, 1990, the police again interviewed Blue. The interview was conducted by Sanders  
10 and Hendrix. This time they said nothing about Blue's presence at the murder or the beginning  
11 of the car chase; they asked Blue whether he was involved and, when he denied being involved,  
12 they ended the interview. The State then produced to Tennison only the tape of this second  
13 interview, rather than the tape and notes from the far more informative first interview. The State  
14 likewise omitted any mention of the first Blue interview from the discovery log it produced to  
15 Tennison. As a result, the log was materially misleading and created for the purpose of  
16 suppressing key evidence from Tennison. The log ultimately produced to Tennison – as  
17 described in the deposition of Adachi – likewise omitted other important events, including a  
18 January 3, 1990 interview of a "witness" who, Tennison discovered from discovery finally  
19 turned over in the habeas litigation in 2001, was Chante Smith. Neither Tennison nor his  
20 attorneys knew of the February 9 Blue interview or the notes from it until fall 2001.

21 Fifth, on April 24, 1990, Hendrix and Butterworth participated in the administration of a  
22 polygraph test to Pauline Maluina. At the time, Maluina had recanted her previous testimony  
23 that she had been present when Shannon was killed. She had previously been questioned on  
24 April 22 and 23, and on both days had stated that she was not a witness to a murder. On  
25 April 24, her third consecutive day of police questioning, she repeated during the polygraph that  
26 she was not a witness to the Shannon murder and previously had testified falsely under oath.  
27 Hendrix, Butterworth, and Sanders were aware of the fact and results of the polygraph  
28 examination, but did not inform Tennison or his counsel of the examination. Tennison was



1 unaware of the role of the polygraph in Butterworth's, Hendrix's, and Sanders' three-day  
2 campaign to bully Maluina to retract her recantation of her previous testimony. Tennison and his  
3 counsel did not know about, or receive information or materials from, the polygraph or police  
4 memorandum describing the polygraph until fall 2001, and did not know about the continued  
5 existence of or have access to the polygraph administration materials until March 2005.

6 Sixth, during the three-day bullying campaign, when Masina Fauolo's veracity was being  
7 challenged by Maluina and should have been in very serious doubt in the eyes of any reasonable  
8 police officer, Hendrix and Sanders interviewed Fauolo and recorded that interview on  
9 audiotape. Defendants never produced the tapes of that interview to Tennison, in fulfillment of  
10 their Brady v. Maryland obligations, in the underlying criminal case or in response to Tennison's  
11 valid subpoena in his habeas suit. The tapes initially were not produced in response to  
12 Tennison's discovery requests in this suit. The Defendants did not produced the tapes until  
13 May 2005, and then only after Magistrate Judge Chen ordered the tapes produced following a  
14 lengthy legal battle. Tennison first learned of the existence of the tapes in discovery in this case.  
15 Defendants maintain that the tapes are blank or inaudible refused to allow Tennison to take  
16 possession of them in order to perform non-destructive testing until the Court ordered them to.  
17 The only reasonable inference is that the tapes contain (or used to contain) information favorable  
18 to Tennison's case and have continually been suppressed by defendants in order to conceal that  
19 information from Tennison. If the tapes are indeed blank, the only reasonable inference is that  
20 defendants destroyed the content of the tapes in a deliberate, bad-faith effort to conceal evidence  
21 favorable to Tennison.

22 Seventh, Hendrix and Sanders engaged in a pattern of manufacturing testimony through  
23 their interviews with Fauolo and Maluina. During Masina Fauolo's first two telephone calls with  
24 Hendrix in August 1989, Fauolo knew next to nothing about the homicide. During Hendrix's  
25 first recorded interview with Fauolo (who by that time had been talking to Hendrix and Sanders  
26 for six weeks), Fauolo knew more, but still knew nothing about the facts of the homicide.  
27 Hendrix and Sanders supplied her with critical details, creating an inaccurate tale about the car  
28 chase preceding the murder and the murder itself, which Fauolo would go on to parrot at trial.



1 Fauolo's testimony was materially inconsistent with the known physical evidence and the  
2 statements of neighborhood residents who witnessed the car chase. For these reasons and others,  
3 any reasonable police officer would have known that Fauolo was not a witness to any murder.  
4 But despite the obvious signs that Fauolo was lying, Hendrix and Sanders assisted her in  
5 concocting presentable (yet false) trial testimony. Similarly, during Hendrix's first recorded  
6 interview with Maluina, she knew virtually nothing about the facts of the case. The details she  
7 did profess to know could not be reconciled with Fauolo's false statements, let alone the physical  
8 evidence or statements of neighborhood residents. During that interview, Hendrix supplied  
9 Maluina with numerous key facts, including without limitation the location of the car crash, the  
10 location of the murder, and the type of gun used to shoot Shannon. Again, any reasonable police  
11 officer would have known that Maluina was not a witness to the Shannon murder.

12 Indeed, after giving perjured testimony at Tennison's 707 hearing, Maluina recanted that  
13 testimony and attempted to come clean, telling Hendrix and Butterworth that she had not  
14 witnessed the Shannon murder. Despite all these clear indications that the narrations Hendrix  
15 and Sanders helped the girls to concoct were patently untrue, Hendrix and Sanders assisted  
16 Butterworth in bullying Maluina into withdrawing her recantation – including using Fauolo, the  
17 person whom Maluina claimed coerced her false testimony in the first place – to pressure  
18 Maluina to withdraw her claim that she lied and was bullied by Fauolo into lying, and then  
19 manufacturing Maluina's perjured testimony, which subsequently was offered at trial and played  
20 a key role in Tennison's unjust conviction.

21 Finally, Hendrix and Sanders checked out and verified Mr. Tennison's alibi in  
22 November 1989, but proceeded to manufacture the case against him anyway.

### 23 **INTERROGATORY NO. 8**

24 Please identify (i.e., provide name and all known addresses and phone numbers) all  
25 persons with knowledge of the facts stated in your response to interrogatory 7.

### 26 **RESPONSE TO INTERROGATORY NO. 8**

27 Tennison objects to this Interrogatory to the extent that it seeks information equally  
28 available to City. Tennison also objects to this Interrogatory as premature because the City has

1 not completed production of materials responsive to Tennison's February 1, 2005 Second Set of  
 2 Requests for Production of Documents and Things, and/or other discovery requests pertinent to  
 3 this inquiry, such as Tennison's February 1, 2005 notice of deposition under Fed. R. Civ.  
 4 P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four  
 5 months to deprive from Tennison further evidence of its liability in this case. The City's demand  
 6 for discovery under these circumstances is troubling.

7       Discovery regarding municipal liability is ongoing and Tennison reserves the right to  
 8 complete his investigation and discovery of the facts and his preparation for trial, to supplement  
 9 this Response, and to adduce evidence at trial that would have been included in this Response  
 10 had its existence been known to Tennison at this time.

11       Subject to and without waiving the specific and general objections above, Tennison sets  
 12 forth his information and belief that persons with knowledge of these facts include:

13       Napoleon Hendrix

14       Prentice Earl Sanders

15       Gerald McCarthy

16       Neville Gittens

17       Michael Lewis

18       Leroy Lindo

19       Chante Smith

20       Luther Blue

21       George Butterworth

22       Lovinsky Ricard

23       Pauline Maluina

24       Frank Jordan

25       Masina Fauolo

26 **INTERROGATORY NO. 9**

27       Please identify all documents supporting or otherwise relating to your response to  
 28 interrogatory 7.

**RESPONSE TO INTERROGATORY NO. 9**

Tennison objects to this Interrogatory on the ground that it calls for information protected from disclosure by the attorney-client privilege or any other applicable privileges or protections. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls for information that constitutes attorney work product, was prepared in anticipation of or in connection with litigation, discloses the mental impressions, conclusions, opinions or legal theories of any attorneys for Tennison or for persons having a common interest with Tennison, or is otherwise protected from disclosure under applicable privileges, laws or rules. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison further objects to this Interrogatory to the extent that it seeks information equally available to City. Tennison also objects to this Interrogatory as premature because the City has not completed production of materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of Documents and Things, and/or other discovery requests pertinent to this inquiry, such as Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four months to deprive from Tennison further evidence of its liability in this case. The City's demand for discovery under these circumstances is troubling.

**INTERROGATORY NO. 10**

Please state all facts supporting your allegation in paragraph 45 of your complaint that "SFPD failed to promulgate appropriate policies to prevent the suppression of such exculpatory evidence."

**RESPONSE TO INTERROGATORY NO. 10**

Tennison objects to this Interrogatory on the ground that it calls for information protected from disclosure by the attorney-client privilege or any other applicable privileges or protections. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls for information that constitutes attorney work product, was prepared in anticipation of or in

1 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
2 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
3 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
4 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
5 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
6 to form a legal conclusion before offering any responses. Tennison further objects to this  
7 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
8 objects to this Interrogatory as premature because the City has not completed production of  
9 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
10 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
11 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
12 City has intentionally delayed providing discovery for these past four months to deprive from  
13 Tennison further evidence of its liability in this case. The City's demand for discovery under  
14 these circumstances is troubling.

15       Discovery regarding municipal liability is ongoing and Tennison reserves the right to  
16 complete his investigation and discovery of the facts and his preparation for trial, to supplement  
17 this Response, and to adduce evidence at trial that would have been included in this Response  
18 had its existence been known to Tennison at this time.

19       Subject to and without waiving the specific and general objections above, Tennison  
20 responds as follows:

21       Defendants' acts and/or omissions led to the violations of Tennison's constitutional rights  
22 and his 13 ½ years of wrongful imprisonment. Had the City promulgated appropriate policies to  
23 preserve the suppression of exculpatory evidence, Defendants would not have, absent willful  
24 disregard of these policies, participated in the course of conduct detailed in the Complaint, in  
25 Judge Wilken's Order granting Tennison's petition for writ of habeas corpus, and as outlined  
26 below.

27       First, on November 7, 1990, after the jury verdict in Tennison's case but prior to the  
28 hearing on his new-trial motion and his sentencing, Lovinsky Ricard confessed, on audiotape, to

1 the murder of Roderick Shannon in an interview with San Francisco Police Officers Michael  
2 Lewis and Neville Gittens. In their depositions in Tennison's habeas proceeding, defendants  
3 Hendrix and Sanders both admitted to learning of the confession shortly after it was made.  
4 Similarly, in his deposition in Tennison's habeas proceeding, Lewis confirmed that he informed  
5 Hendrix and Sanders of the Ricard confession shortly after it was made. In his deposition in this  
6 case, Hendrix further confirmed that he learned of the confession between the jury verdict in  
7 Tennison's case and the hearing on Tennison's new-trial motion, and that he took no steps to  
8 ensure that the confession was turned over to the District Attorney or to Tennison's counsel. In  
9 fact, he testified that he did not listen to the tape of the confession after he learned of it and was  
10 irritated at Officers Lewis and Gittens for having interviewed Ricard. Defendant George  
11 Butterworth denies that Hendrix or Sanders ever told him about the Ricard confession, and has  
12 testified that he did not know of the confession until Lewis informed him of it at lunch on  
13 May 17, 1991, during the hearing on Tennison's new-trial motion. He further testified that, had  
14 he known of the confession before that time, he immediately would have disclosed the  
15 confession to Tennison's attorney. Neither Tennison nor either of his attorneys, Jeffrey Adachi  
16 and LeRue Grim, knew of the Ricard confession until Butterworth disclosed its existence on  
17 May 17, 1991. The taped confession, and any notes accompanying it, should have been  
18 produced to Adachi on November 7, 1990.

19 Second, on October 4, 1989, Hendrix and Sanders formally requested \$2,500 from the so-  
20 called "Secret Witness Program," purportedly to pay a witness in connection with the SFPD  
21 investigation of the homicide of Roderick Shannon. At the time of the request, Masina Fauolo,  
22 one of the two purported eyewitnesses who testified against Tennison at trial, had been talking to  
23 the inspectors for six weeks, but had not yet made any formal, recorded statement. Hendrix's  
24 and Sanders' request was subsequently approved. On October 11, 1989, Sanders withdrew  
25 \$1,250 from a police contingency fund. On October 31, 1989, Fauolo made her first formal,  
26 recorded statement to the police regarding the case. That statement was inconsistent in  
27 numerous material ways with the known physical evidence and the testimony of neighborhood  
28 residents who witnessed the car chase preceding the Shannon murder. On November 28, 1989,

1 Pauline Maluina, the other purported eyewitness against Tennison, made a formal, recorded  
2 statement to police that was inconsistent in numerous material ways with the known physical  
3 evidence, the testimony of neighborhood residents, and Fauolo's earlier statement. In each of  
4 those interviews, Hendrix supplied Maluina and Fauolo with critical information the girls later  
5 claimed to have already known. Four days later, on December 2, 1989, Hendrix withdrew  
6 \$1,120 from a police contingency fund. Hendrix testified at his deposition that the Secret  
7 Witness Program, by its nature, was kept secret from the District Attorney and that information  
8 about requests and payments of money from the Secret Witness Program were not disclosed to  
9 the District Attorney's office. Defendant Butterworth confirmed at his deposition that he was  
10 never aware of the request for funds, or any payment of funds to Fauolo, Maluina, Hendrix, or  
11 Sanders, and that, if he had been, he immediately would have disclosed that information to  
12 Tennison's attorney. Neither Tennison nor either of his attorneys, Jeffrey Adachi and LeRue  
13 Grim, knew of the Secret Witness Program request or any payment of funds to any witness until  
14 fall 2001. Neither Tennison nor his counsel knew of Hendrix's and Sanders' receipt of  
15 disbursements from Contingent Fund B until September 2003. All of the materials reflecting  
16 Hendrix's and Sanders' application for and receipt of approval of payments from the Secret  
17 Witness Fund, disbursements from that fund, and disbursements from Contingent Fund B should  
18 have been disclosed to Tennison's counsel prior to January 1, 1990.

19 Third, on January 3, 1990, Hendrix and Sanders interviewed Chante Smith, who claimed  
20 to know that Tennison had not been present at the murder scene. In addition to exonerating  
21 Tennison and Antoine Goff, Smith also implicated a number of other individuals in the killing,  
22 including Lovinsky Ricard. Sanders took notes of the interview which did not convey either  
23 Smith's exculpatory statements regarding Tennison or her inculpatory statements regarding  
24 Ricard and others. Hendrix and Sanders turned these sketchy notes over to Butterworth, but, as  
25 Butterworth testified at his deposition, the notes did not convey the exculpatory information  
26 Smith had conveyed, and were too cryptic to be meaningful. Neither Hendrix nor Sanders made  
27 any effort to memorialize the exculpatory statements Smith had made to them, to inform  
28 Butterworth, Tennison, or Tennison's counsel about those statements, or to follow up with Smith



1 regarding her knowledge of the Shannon murder, which directly conflicted with the case Hendrix  
2 and Sanders presented to Butterworth. Butterworth testified that he did not have knowledge,  
3 from the notes or any other source, of Smith's exculpatory statements, and did not disclose those  
4 statements to Tennison or his counsel. Butterworth did not turn over the January 3 notes to  
5 Tennison's counsel. Indeed, Sanders participated in the State's opposition to Tennison's motion  
6 for a new trial and submitted a declaration stating that Ricard's confession was unreliable  
7 because it was uncorroborated. Sanders made this false statement with the knowledge that,  
8 months before, Smith had corroborated all the material facts in Ricard's story in an interview he  
9 himself had conducted. Neither Tennison nor his counsel knew of Smith's prior statement to the  
10 police until 1992. Tennison did not know about or receive the written notes of the Smith  
11 interview until the fall of 2001. At some point after his conviction, Tennison learned that a  
12 woman named "Chante" claimed to have witnessed the Shannon murder, but he did not know the  
13 woman was Chante Smith and had previously given a statement to police. He informed his  
14 counsel of all the information he had about "Chante," but counsel was not able to locate her until  
15 after Tennison was sentenced and sent to jail.

16 Fourth, on February 9, 1990, Sanders and San Francisco Police Inspector Nevil Gittens  
17 interviewed Luther Blue. During that interview, the police told Blue that they knew he was  
18 present at the murder and that the car chase preceding the murder had started at the 7-Eleven on  
19 Bayshore Boulevard, not at Lovers' Lane, as Fauolo and Maluina would testify at trial. Hendrix  
20 testified at deposition that, when interviewing a witness to a crime, he would not question the  
21 witness by making statements he knew to be false. Although the Blue interview was videotaped,  
22 the tapes and notes about taped interviews produced to Tennison and his counsel in pretrial  
23 discovery do not include the February 9 Blue interview. Just five days later, on  
24 February 14, 1990, the police again interviewed Blue. The interview was conducted by Sanders  
25 and Hendrix. This time they said nothing about Blue's presence at the murder or the beginning  
26 of the car chase; they asked Blue whether he was involved and, when he denied being involved,  
27 they ended the interview. The State then produced to Tennison only the tape of this second  
28 interview, rather than the tape and notes from the far more informative first interview. The State



1 likewise omitted any mention of the first Blue interview from the discovery log it produced to  
2 Tennison. As a result, the log was materially misleading and created for the purpose of  
3 suppressing key evidence from Tennison. The log ultimately produced to Tennison – as  
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5 January 3, 1990 interview of a “witness” who, Tennison discovered from discovery finally  
6 turned over in the habeas litigation in 2001, was Chante Smith. Neither Tennison nor his  
7 attorneys knew of the February 9 Blue interview or the notes from it until fall 2001.

8 Fifth, on April 24, 1990, Hendrix and Butterworth participated in the administration of a  
9 polygraph test to Pauline Maluina. At the time, Maluina had recanted her previous testimony  
10 that she had been present when Shannon was killed. She had previously been questioned on  
11 April 22 and 23, and on both days had stated that she was not a witness to a murder. On  
12 April 24, her third consecutive day of police questioning, she repeated during the polygraph that  
13 she was not a witness to the Shannon murder and previously had testified falsely under oath.  
14 Hendrix, Butterworth, and Sanders were aware of the fact and results of the polygraph  
15 examination, but did not inform Tennison or his counsel of the examination. Tennison was  
16 unaware of the role of the polygraph in Butterworth’s, Hendrix’s, and Sanders’ three-day  
17 campaign to bully Maluina to retract her recantation of her previous testimony. Tennison and his  
18 counsel did not know about, or receive information or materials from, the polygraph or police  
19 memorandum describing the polygraph until fall 2001, and did not know about the continued  
20 existence of or have access to the polygraph administration materials until March 2005.

21 Sixth, during the three-day bullying campaign, when Masina Fauolo’s veracity was being  
22 challenged by Maluina and should have been in very serious doubt in the eyes of any reasonable  
23 police officer, Hendrix and Sanders interviewed Fauolo and recorded that interview on  
24 audiotape. Defendants never produced the tapes of that interview to Tennison, in fulfillment of  
25 their Brady v. Maryland obligations, in the underlying criminal case or in response to Tennison’s  
26 valid subpoena in his habeas suit. The tapes initially were not produced in response to  
27 Tennison’s discovery requests in this suit. The Defendants did not produced the tapes until  
28 May 2005, and then only after Magistrate Judge Chen ordered the tapes produced following a

lengthy legal battle. Tennison first learned of the existence of the tapes in discovery in this case. Defendants maintain that the tapes are blank or inaudible refused to allow Tennison to take possession of them in order to perform non-destructive testing until the Court ordered them to. The only reasonable inference is that the tapes contain (or used to contain) information favorable to Tennison's case and have continually been suppressed by defendants in order to conceal that information from Tennison. If the tapes are indeed blank, the only reasonable inference is that defendants destroyed the content of the tapes in a deliberate, bad-faith effort to conceal evidence favorable to Tennison.

Seventh, Hendrix and Sanders engaged in a pattern of manufacturing testimony through their interviews with Fauolo and Maluina. During Masina Fauolo's first two telephone calls with Hendrix in August 1989, Fauolo knew next to nothing about the homicide. During Hendrix's first recorded interview with Fauolo (who by that time had been talking to Hendrix and Sanders for six weeks), Fauolo knew more, but still knew nothing about the facts of the homicide. Hendrix and Sanders supplied her with critical details, creating an inaccurate tale about the car chase preceding the murder and the murder itself, which Fauolo would go on to parrot at trial. Fauolo's testimony was materially inconsistent with the known physical evidence and the statements of neighborhood residents who witnessed the car chase. For these reasons and others, any reasonable police officer would have known that Fauolo was not a witness to any murder. But despite the obvious signs that Fauolo was lying, Hendrix and Sanders assisted her in concocting presentable (yet false) trial testimony. Similarly, during Hendrix's first recorded interview with Maluina, she knew virtually nothing about the facts of the case. The details she did profess to know could not be reconciled with Fauolo's false statements, let alone the physical evidence or statements of neighborhood residents. During that interview, Hendrix supplied Maluina with numerous key facts, including without limitation the location of the car crash, the location of the murder, and the type of gun used to shoot Shannon. Again, any reasonable police officer would have known that Maluina was not a witness to the Shannon murder.

Indeed, after giving perjured testimony at Tennison's 707 hearing, Maluina recanted that testimony and attempted to come clean, telling Hendrix and Butterworth that she had not

1 witnessed the Shannon murder. Despite all these clear indications that the narrations Hendrix  
2 and Sanders helped the girls to concoct were patently untrue, Hendrix and Sanders assisted  
3 Butterworth in bullying Maluina into withdrawing her recantation – including using Fauolo, the  
4 person whom Maluina claimed coerced her false testimony in the first place – to pressure  
5 Maluina to withdraw her claim that she lied and was bullied by Fauolo into lying, and then  
6 manufacturing Maluina's perjured testimony, which subsequently was offered at trial and played  
7 a key role in Tennison's unjust conviction.

8 Finally, Hendrix and Sanders checked out and verified Mr. Tennison's alibi in  
9 November 1989, but proceeded to manufacture the case against him anyway.

10 **INTERROGATORY NO. 11**

11 Please identify (i.e., provide name and all known addresses and phone numbers) all  
12 persons with knowledge of the facts stated in your response to interrogatory 10.

13 **RESPONSE TO INTERROGATORY NO. 11**

14 Tennison objects to this Interrogatory on the ground that it calls for information protected  
15 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
16 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
17 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
18 for information that constitutes attorney work product, was prepared in anticipation of or in  
19 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
20 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
21 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
22 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
23 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
24 to form a legal conclusion before offering any responses. Tennison further objects to this  
25 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
26 objects to this Interrogatory as premature because the City has not completed production of  
27 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
28 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as

Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four months to deprive from Tennison further evidence of its liability in this case. The City's demand for discovery under these circumstances is troubling.

Discovery regarding municipal liability is ongoing and Tennison reserves the right to complete his investigation and discovery of the facts and his preparation for trial, to supplement this Response, and to adduce evidence at trial that would have been included in this Response had its existence been known to Tennison at this time.

Subject to and without waiving the specific and general objections above, Tennison sets forth his information and belief that persons with knowledge of these facts include:

Napoleon Hendrix

Prentice Earl Sanders

Gerald McCarthy

Neville Gittens

Michael Lewis

Leroy Lindo

Chante Smith

Luther Blue

George Butterworth

Lovinsky Ricard

Pauline Maluina

Frank Jordan

Masina Fauolo

#### **INTERROGATORY NO. 12**

Please identify all documents supporting or otherwise relating to your response to interrogatory 10.

#### **RESPONSE TO INTERROGATORY NO. 12**

Tennison objects to this Interrogatory on the ground that it calls for information protected

1 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
 2 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
 3 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
 4 for information that constitutes attorney work product, was prepared in anticipation of or in  
 5 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
 6 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
 7 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
 8 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
 9 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
 10 to form a legal conclusion before offering any responses. Tennison further objects to this  
 11 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
 12 objects to this Interrogatory as premature because the City has not completed production of  
 13 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
 14 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
 15 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
 16 City has intentionally delayed providing discovery for these past four months to deprive from  
 17 Tennison further evidence of its liability in this case. The City's demand for discovery under  
 18 these circumstances is troubling.

### 19 **INTERROGATORY NO. 13**

20 If you contend that any policy, custom, or usage of the City and County of San Francisco  
 21 caused any injury that you are claiming in this case, please state all facts supporting that  
 22 contention, including without limitation identification of the precise written or unwritten  
 23 policies, customs, or usages that you contend caused any injury to you and identification of the  
 24 precise way(s) in which such policies, customs, or usages caused such injury.

### 25 **RESPONSE TO INTERROGATORY NO. 13**

26 Tennison objects to this Interrogatory on the ground that it calls for information protected  
 27 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
 28 Any inadvertent disclosure of such information shall not be deemed a waiver of any such

1 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
2 for information that constitutes attorney work product, was prepared in anticipation of or in  
3 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
4 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
5 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
6 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
7 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
8 to form a legal conclusion before offering any responses. Tennison further objects to this  
9 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
10 objects to this Interrogatory as premature because the City has not completed production of  
11 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
12 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
13 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
14 City has intentionally delayed providing discovery for these past four months to deprive from  
15 Tennison further evidence of its liability in this case. The City's demand for discovery under  
16 these circumstances is troubling.

17 **INTERROGATORY NO. 14**

18 Please identify (i.e., provide name and all known addresses and phone numbers) all  
19 persons with knowledge of the facts stated in your response to interrogatory 13.

20 **RESPONSE TO INTERROGATORY NO. 14**

21 Tennison objects to this Interrogatory on the ground that it calls for information protected  
22 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
23 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
24 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
25 for information that constitutes attorney work product, was prepared in anticipation of or in  
26 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
27 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
28 is otherwise protected from disclosure under applicable privileges, laws or rules. Any



1 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
2 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
3 to form a legal conclusion before offering any responses. Tennison further objects to this  
4 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
5 objects to this Interrogatory as premature because the City has not completed production of  
6 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
7 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
8 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
9 City has intentionally delayed providing discovery for these past four months to deprive from  
10 Tennison further evidence of its liability in this case. The City's demand for discovery under  
11 these circumstances is troubling.

12 **INTERROGATORY NO. 15**

13 Please identify all documents supporting or otherwise relating to your response to  
14 interrogatory 13.

15 **RESPONSE TO INTERROGATORY NO. 15**

16 Tennison objects to this Interrogatory on the ground that it calls for information protected  
17 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
18 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
19 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
20 for information that constitutes attorney work product, was prepared in anticipation of or in  
21 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
22 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
23 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
24 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
25 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
26 to form a legal conclusion before offering any responses. Tennison further objects to this  
27 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
28 objects to this Interrogatory as premature because the City has not completed production of



1 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
2 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
3 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
4 City has intentionally delayed providing discovery for these past four months to deprive from  
5 Tennison further evidence of its liability in this case. The City's demand for discovery under  
6 these circumstances is troubling.

7 **INTERROGATORY NO. 16**

8 If you contend that the City and County of San Francisco negligently selected, trained,  
9 retained, supervised, investigated, and/or disciplined any employee of the City and County of  
10 San Francisco whom you claim caused some or all of your injuries in this case, please state all  
11 facts supporting that contention.

12 **RESPONSE TO INTERROGATORY NO. 16**

13 Tennison objects to this Interrogatory on the ground that it calls for information protected  
14 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
15 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
16 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
17 for information that constitutes attorney work product, was prepared in anticipation of or in  
18 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
19 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
20 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
21 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
22 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
23 to form a legal conclusion before offering any responses. Tennison further objects to this  
24 Interrogatory to the extent that it seeks information equally available to City. Tennison further  
25 objects that this Interrogatory is compound. Tennison also objects to this Interrogatory as  
26 premature because the City has not completed production of materials responsive to Tennison's  
27 February 1, 2005 Second Set of Requests for Production of Documents and Things, and/or other  
28 discovery requests pertinent to this inquiry, such as Tennison's February 1, 2005 notice of

1 deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has intentionally delayed providing  
2 discovery for these past four months to deprive from Tennison further evidence of its liability in  
3 this case. The City's demand for discovery under these circumstances is troubling.

4 **INTERROGATORY NO. 17**

5 Please identify (i.e., provide name and all known addresses and phone numbers) all  
6 persons with knowledge of the facts stated in your response to interrogatory 16.

7 **RESPONSE TO INTERROGATORY NO. 17**

8 Tennison objects to this Interrogatory on the ground that it calls for information protected  
9 from disclosure by the attorney-client privilege or any other applicable privileges or protections.  
10 Any inadvertent disclosure of such information shall not be deemed a waiver of any such  
11 protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls  
12 for information that constitutes attorney work product, was prepared in anticipation of or in  
13 connection with litigation, discloses the mental impressions, conclusions, opinions or legal  
14 theories of any attorneys for Tennison or for persons having a common interest with Tennison, or  
15 is otherwise protected from disclosure under applicable privileges, laws or rules. Any  
16 inadvertent disclosure of such information shall not be deemed a waiver of any such protection  
17 or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison  
18 to form a legal conclusion before offering any responses. Tennison further objects to this  
19 Interrogatory to the extent that it seeks information equally available to City. Tennison also  
20 objects to this Interrogatory as premature because the City has not completed production of  
21 materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of  
22 Documents and Things, and/or other discovery requests pertinent to this inquiry, such as  
23 Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the  
24 City has intentionally delayed providing discovery for these past four months to deprive from  
25 Tennison further evidence of its liability in this case. The City's demand for discovery under  
26 these circumstances is troubling.

**INTERROGATORY NO. 18**

Please identify all documents supporting or otherwise relating to your response to interrogatory 16.

**RESPONSE TO INTERROGATORY NO. 18**

Tennison objects to this Interrogatory on the ground that it calls for information protected from disclosure by the attorney-client privilege or any other applicable privileges or protections. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls for information that constitutes attorney work product, was prepared in anticipation of or in connection with litigation, discloses the mental impressions, conclusions, opinions or legal theories of any attorneys for Tennison or for persons having a common interest with Tennison, or is otherwise protected from disclosure under applicable privileges, laws or rules. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison to form a legal conclusion before offering any responses. Tennison further objects to this Interrogatory to the extent that it seeks information equally available to City. Tennison also objects to this Interrogatory as premature because the City has not completed production of materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of Documents and Things, and/or other discovery requests pertinent to this inquiry, such as Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four months to deprive from Tennison further evidence of its liability in this case. The City's demand for discovery under these circumstances is troubling.

**INTERROGATORY NO. 19**

Please describe in detail how any alleged negligent section, training, retention, supervision investigation, and/or discipline of any employee of the City and County of San Francisco caused some or all of the injuries that you allege that you sustained in this case.

**RESPONSE TO INTERROGATORY NO. 19**

Tennison objects to this Interrogatory on the ground that it calls for information protected from disclosure by the attorney-client privilege or any other applicable privileges or protections. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison further objects to this Interrogatory on the ground that it calls for information that constitutes attorney work product, was prepared in anticipation of or in connection with litigation, discloses the mental impressions, conclusions, opinions or legal theories of any attorneys for Tennison or for persons having a common interest with Tennison, or is otherwise protected from disclosure under applicable privileges, laws or rules. Any inadvertent disclosure of such information shall not be deemed a waiver of any such protection or privilege. Tennison also objects to this Interrogatory on the ground that it calls for Tennison to form a legal conclusion before offering any responses. Tennison further objects to this Interrogatory to the extent that it seeks information equally available to City. Tennison also objects to this Interrogatory as premature because the City has not completed production of materials responsive to Tennison's February 1, 2005 Second Set of Requests for Production of Documents and Things, and/or other discovery requests pertinent to this inquiry, such as Tennison's February 1, 2005 notice of deposition under Fed. R. Civ. P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four months to deprive from Tennison further evidence of its liability in this case. The City's demand for discovery under these circumstances is troubling.

#### **INTERROGATORY NO. 20**

Please describe in detail any other instance(s) of alleged misconduct by any employee(s) of the City and County of San Francisco that you contend support your claim that the City and County of San Francisco violated your constitutional rights. (In describing such alleged misconduct, please identify the employee(s) at issue and all other persons who were involved in or who witnessed the alleged misconduct.).

#### **RESPONSE TO INTERROGATORY NO. 20**

Tennison objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, oppressive, and/or unreasonably cumulative and duplicative. Tennison further

1 objects to this Interrogatory in that it seeks information that is neither relevant to this litigation or  
2 reasonably calculated to lead to the discovery of admissible evidence. Tennison also objects to  
3 this Interrogatory on the ground that it is indecipherably vague in that "other instances" is not  
4 defined. Tennison also objects to this Interrogatory as premature because the City has not  
5 completed production of materials responsive to Tennison's February 1, 2005 Second Set of  
6 Requests for Production of Documents and Things, and/or other discovery requests pertinent to  
7 this inquiry, such as Tennison's February 1, 2005 notice of deposition under Fed. R. Civ.  
8 P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four  
9 months to deprive from Tennison further evidence of its liability in this case. The City's demand  
10 for discovery under these circumstances is troubling.

11 **INTERROGATORY NO. 21**

12 Please identify all documents supporting or otherwise relating to your response to  
13 interrogatory 20.

14 **RESPONSE TO INTERROGATORY NO. 21**

15 Tennison objects to this Interrogatory on the grounds that it is overly broad, unduly  
16 burdensome, oppressive, and/or unreasonably cumulative and duplicative. Tennison further  
17 objects to this Interrogatory in that it seeks information that is neither relevant to this litigation or  
18 reasonably calculated to lead to the discovery of admissible evidence. Tennison also objects to  
19 this Interrogatory on the ground that it is indecipherably vague in that "other instances" is not  
20 defined. Tennison also objects to this Interrogatory as premature because the City has not  
21 completed production of materials responsive to Tennison's February 1, 2005 Second Set of  
22 Requests for Production of Documents and Things, and/or other discovery requests pertinent to  
23 this inquiry, such as Tennison's February 1, 2005 notice of deposition under Fed. R. Civ.  
24 P. 30(b)(6). In fact, the City has intentionally delayed providing discovery for these past four  
25 months to deprive from Tennison further evidence of its liability in this case. The City's demand  
26 for discovery under these circumstances is troubling.

1 Dated: May 27, 2005

As to objections,

2 KEKER & VAN NEST, LLP

3  
4  
5 By: 

6 STEVEN P. RAGLAND  
7 Attorneys for Plaintiff  
8 JOHN TENNISON  
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**PROOF OF SERVICE**

I declare and state as follows:

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Kecker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111. On May 27, 2005, I served the following document(s):

**PLAINTIFF JOHN TENNISON'S RESPONSES TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S FIRST SET OF INTERROGATORIES**

X by **COURIER**, by placing a true and correct copy in a sealed envelope addressed as shown below, and dispatching a messenger from Worldwide Attorney Services, Inc., whose address is 75 Lily Street, 3rd Floor, San Francisco, CA 94102, with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving the package with the person whose name is shown or the person authorized to accept courier deliveries on behalf of the addressee.

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Scott D. Wiener  
Deputy City Attorneys  
Office of the City Attorney  
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Tel: (415) 554-3856  
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Attorneys for Defendants  
George Butterworth and  
The City and County of San Francisco

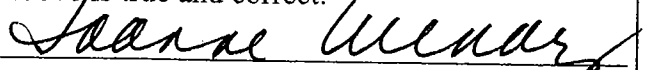
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Attorneys for Defendants  
Prentice Earl Sanders and  
Napoleon Hendrix

Executed on May 27, 2005, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
JOANNE WINARS